No. 80-608

APR 27 1981

ALEXANDER L. STEVAS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

UNITED STATES POSTAL SERVICE,
Appellant,

v.

COUNCIL OF GREENBURGH CIVIC ASSOCIATIONS and SAW MILL VALLEY CIVIC ASSOCIATION,
Appellees.

On Appeal from the United States District Court for the Southern District of New York

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MOTION OF APPELLEES FOR LEAVE TO FILE SUPPLEMENTAL BRIEF AFTER ARGUMENT

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Appellees move this Court, pursuant to Rule 35.6 of the Supreme Court Rules for leave to file the Supplemental Brief included herein after oral argument which was held on April 21, 1981.

This Supplemental Brief addresses only a statutory argument presented at oral argument but not previously briefed by the parties in their principal briefs filed in this appeal. The question of whether or not Section 1725 can properly be applied to distribution by "private hands

without compensation" was discussed in Appellant's Reply Brief, p. 4 n.2, in response to the argument of Amici Independent Sector et al.* Because this argument was the subject of considerable discussion at oral argument, Appellees request leave to submit the enclosed Supplemental Brief.**

Respectfully submitted,

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April 27, 1981

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* Appellees first obtained a copy of the Appellant's Reply Brief from the Supreme Court Clerk's office on the afternoon preceding the oral argument of this case.

** Appellees are authorized to represent that Amici Independent Sector et al. and Piedmont Heights Civic Club, Inc. et al. have reviewed and join the statutory argument contained in the enclosed brief.

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APPELLEES' SUPPLEMENTAL BRIEF

Section 1725, Title 18, U.S.C., provides:

> Whoever knowingly and willfully deposits any mailable matter such as statement of accounts, sale bills, or other like matter, on which no postage has been paid, in any letter box established, approved, or accepted by the Postmaster General for the receipt or delivery of mail matter on any mail route with intent to avoid payment of lawful postage thereon, shall for each such offense be fined not more than $300.

Congress specifically limited the criminal conduct proscribed by this statute with the language "with intent to avoid payment of lawful postage thereon. . ." Neither Section 1725 nor any other provision of Chapter 83 of Title 18 defines the term "lawful postage." Nor does Title 39 of the United States Code, "Postal Service," de-

fine "lawful postage." Rather the meaning of that term must be derived from analysis of several statutory provisions.

Appellant is authorized by law to establish "equitable rates of postage and fees for postal services." 39 U.S.C. § 3621. Postage must be paid not only when a letter is sent through the mail, but generally must also be paid when a letter is carried "out of the mails." [1] However, Congress has specifically exempted altogether from the requirement to pay postage delivery of letters outside of the mails "by private hands without compensation." 18 U.S.C. § 1696(c).[2] Distribution of appellees' circulars and leaflets by uncompensated volunteers clearly constitutes "conveyance or transmission . . . by private hands without compensation," hence is squarely within the exemption Congress has created from payment of "lawful postage." [3]

Since appellees had no legal obligation to pay any postage on the matter distributed by the volunteers, as a matter of law they could have no "intent to avoid pay-

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[1] Section 601 of Title 39 provides that "[a] letter may be carried out of the mails when", *inter alia*,

> (2) the amount of postage which would have been charged on the letter if it had been sent by mail is paid by stamps, or postage meter stamps, on the envelope. . . .

[2] 18 U.S.C. § 1696(c) provides:

> (c) this chapter shall not prohibit the conveyance or transmission of letters or packets by private hands without compensation, or by special messanger employed for the particular occasion only. Whenever more than twenty-five such letters or packets are conveyed or transmitted by such special messenger, the requirements of section 601 of title 39, shall be observed as to each piece.

[3] Section 1696(c) also exempts the delivery by special messenger employed for that particular occasion only, so long as such special messenger conveys no more than twenty-five letters or packets. If more than twenty-five letters are to be conveyed by special messenger, the sender has the obligation to pay postage required by 39 U.S.C. § 601(a)(2).

ment of lawful postage" within the meaning of 18 U.S.C. § 1725, in depositing such matter in residents' mailboxes. Accordingly, Section 1725 has no application whatever to appellees' distribution of leaflets to privately-owned mailboxes, and the sanctions imposed by that section are likewise inapplicable to appellees and other non-profit groups similarly situated.

It is also noted that Appellant, in its reply brief, characterizes its demand that all mailable matter deposited in a private mailbox be stamped as a "fee for use of the mails." (Reply Brief for Appellant at 4; footnote deleted.) No such user-fee can be justified here, where appellees use no services of the Postal Service whatever, and are specifically exempted by 18 U.S.C. § 1696(c), *supra*, from the requirement of paying postage.[4]

Respectfully submitted,

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[4] The private mailbox is the end of the mail distribution chain, and no action of the Postal Service is thereafter involved in putting the matter in the recipient's hands. The asserted expense incurred by the Postal Service when mail carriers sort through matter found in a mailbox is de minimus and speculative by any standard as the Court below found. 490 F. Supp. at 157.